PUBLIC PROSECUTOR v. YEOW FAH CHEONG & ANOR.

[A.Cr.J. (Wan Suleiman J.) September 23, 1970]

[Alor Star — Kedah Criminal Reference No. 1 of 1970]

Animals and Birds — Infection — Declaring State to be infected area — Disease among animals in another State — Prohibition of removal of animals or birds — Order made to prohibit movement of pigs or any part thereof — Order ultra vires the Ordinance — Animals Ordinance, 1953, ss. 36(1) & 72.

Interpretation — "Animals" or "birds" — Meaning of.

Section 36(1) of the Animals Ordinance gives the Mentri Besar if he has reasonable cause to believe that there is any disease amongst animals or birds in a State power to declare such State or part of such State to be an infected area and to prohibit the removal into or out of such area of any animals or birds. In purported exercise of this power the Mentri Besar of Perlis made an order stating that swine fever exists among pigs in Kedah and declaring the State of Perlis to be an infected State and prohibiting the movement of pigs or any part thereof within into or out of Perlis. The accused in this case was charged with moving seven halves of slaughtered swines from Perlis into Kedah.

Held: the order was *ultra vires* the Animals Ordinance as the preamble to the order clearly showed that there was reasonable ground to believe that the disease existed only in Kedah not in Perlis and as it purported to make it an offence to move not only pigs but any part thereof. The word "animals" or "birds" in section 36(1) of the Animals Ordinance refer only to live animals or birds and not to carcases.

CRIMINAL REFERENCE.

Wan Suleiman J.: The subjects of this order of revision were charged as follows: —

"That you on the 28th day of July, 1970 at about 4.15 a.m. in front of the Police Station, Jitra in the district of Kubang Pasu, State of Kedah, moved seven (7) halves slaughtered swines, to wit, by means of a motor car No. R 886, from the State of Perlis into the State of Kedah which is contrary to the order made by the Menteri Besar of Perlis vide L.N. No. 22/66 and that you have thereby committed an offence punishable under section 72 of the Animals Ordinance No. 17/53."

Both pleaded guilty, were convicted by the magistrate, Jitra and fined $1 each.

Perlis L. N. 22 of 1966 made by the Menteri Besar, Perlis, in the purported exercise of the powers given to him under section 36(1) of the Animals Ordinance No. 17 of 1953 reads as follows: -

"Order Under section 36(1)

Whereas there is reasonable cause to believe that the disease known as swine fever exists amongst pigs in the district of Kota Setar, Mukim Kota Setar, in the State of Kedah. *As a matter of prevention* from its spreading into the State of Perlis:

Now, therefore, I, Tan Sri Sheikh Ahmad bin Mohd. Hashim, Menteri Besar, Perlis, in exercise of the powers conferred upon me by sub-section (1) of section 36 of the Animals Ordinance, 1953, hereby declare the State of Perlis to be infected area for pigs and prohibit the movement of pigs *and any part thereof* within, into or *out of* the aforesaid infected area except with the written permission of the State Veterinary Surgeon, Perlis, or such persons as he may authorise for this purpose."

The order above is in my view *ultra vires* the Animals Ordinance, 1953 for two reasons.

Section 36(1) of the Animals Ordinance reads as follows: -

"Whenever there is reasonable cause to believe that any disease exists amongst any animals or birds in any State or Settlement, the Menteri Besar of such State ..... may issue an order declaring such State or any part of such State to be an infected area and may in such order prohibit absolutely or conditionally the removal into or out of such area of any animals or birds or specified kinds of animals or birds."

The sub-section empowers a Menteri Besar to issue an order of this sort declaring any State of which he is Menteri Besar an infected area "whenever there is reasonable cause to believe that any disease exists amongst any animals...." in *such* State. The preamble to the Perlis L.N. 22 of 1966 clearly shows that there was reasonable ground to believe that the disease existed only among pigs in a district within *another* State, *i.e.* the State of Kedah; not in the State of Perlis.

Secondly the order purports to make it an offence to move not only pigs but "any part thereof" within, into or out of the infected area.

In section 2 of the Ordinance, "animal" is defined, unless the context otherwise requires as including "horses, cattle, sheep... of any age or sex". There is also a definition of "carcase" — "the dead body of an animal... and includes any part thereof".

I do not think that the context of this sub-section of an Ordinance penal in nature would justify me in extending the meaning of the word "animal" to include carcases of animals. Had the legislature intended to give a Menteri Besar powers to prohibit the moving of dead animals, it would have done so in expressed terms, as it has done in section 34(1) of the Ordinance which prohibits persons from moving or disposing of "any animal or bird deceased... or of the carcase of such animal or bird..." The word "animals" or "birds" in section 36(1) must therefore refer only to live animals or birds.

The subjects of this revision have therefore been guilty of no offence. The order of conviction made in the court below is accordingly set aside, the accused acquitted and discharged, and any fine paid by them should be refunded.

Conviction set aside.

KARUPPIAH CHETTIAR v. MOHAMED SHARJUDIN & ANOR.

[O.C.J. (Pawan Ahmad J.) September 25, 1970]

[Ipoh — Civil Suit No. 668 of 1968]

Land Laws — Transfer — Unregistered transfer of land — Private caveat lodged — Whether prevents registration of prohibitory order — National Land Code, 1965, s. 322(3).

One Subramaniam had purchased on November 8, 1968, 2/6th undivided shares in land from the defendant, who was the registered owner. A transfer was executed but it was not registered as the defendant failed to produce the document of title. On November 13, 1968 Subramaniam applied to the Registrar of Titles for the entry of a private *caveat* to protect

his interest. On April 14, 1969 the plaintiff obtained judgment against the defendant for non-payment of a debt and on April 22, 1969 the plaintiff obtained a prohibitory order from the court against the said land. Subramaniam thereupon applied to set aside the prohibitory order.

Held: as the prohibitory order in this case was obtained from the court after the applicant's *caveat* had been registered and was therefore of no avail against the applicant's *caveat*, it must be set aside.

Case referred to:-

(1) *Sockalingam Mudaliar* v. *Ramasamy Chettiar & Anor.* [1938] M.L.J. 237; Reprint 227.

CIVIL SUIT.

M. Sivalingam for the applicant.

F. C. Arulanandom for the respondent.

Cur. Adv. Vult.

Pawan Ahmad J.: This is an application to set aside the prohibitory order made and registered in the name of the defendant and also for the usual consequential orders.

The facts of this case which are not in dispute are as follows: On 8th November 1968 the applicant purchased 2/6th undivided share in land held under Grant No. 11746 Lot No. 19899 in the Mukim of Ulu Kinta (hereinafter known as "the said land") from the defendant who was then the registered owner. A transfer was duly executed on the same day but it was never registered because the defendant failed to produce the document of title. Subsequently, on 13th November 1968 the applicant applied to the Registrar of Titles for an entry of a private *caveat* to protect his interest and it was duly registered in the Registry of Titles on the same day *vide* Presentation No. 631/68. On 14th April 1969 the respondent obtained a judgment against the defendant for non-payment of a debt. Subsequently, on 22nd April 1969 the respondent obtained a prohibitory order from the court against the said land.

The only issue in this case and agreed to by counsel for both parties is whether the unregistered transfer dated 8th November 1968 and supported by the entry of *caveat* registered on 13th November 1968 *vide* Presentation No. 631/68 affect the prohibitory order obtained by the respondent on 22nd April 1969 and registered subsequently and also the right of the respondent as the attaching creditor.

Numerous cases were cited by counsel of either party in support of his contention. It is the contention of the applicant that the prohibitory order which came later than the *caveat* cannot be effective on the ground that at the time the order was made the defendant had no beneficial interest in the said land. On the other hand, the respondent contended that the applicant has no legal interest in the said land because it is still registered in the name of the defendant and therefore the applicant's *caveat* has no effect against the respondent who is the attaching creditor.

When the unregistered transfer of the said land was executed on 8th November 1968 in favour of the applicant he thereupon obtained only an equitable right in possession over the said land. In order to protect his unregistered interest he applied on 13th November 1968 to enter a private *caveat* and on the same day it was duly registered by the Registry of Titles, Perak, *vide* Presentation No. 631/68. The effect of registering such a *caveat* is contained in section 322(3) of the National Land Code which reads as follows:

> "The effect of any private *caveat* expressed to bind a particular interest only shall, subject to sub-sections (4) and (5), be to prohibit the registration, endorsement or entry on the register document of title of —
>
> (a) any instrument of dealing directly affecting that interest (including any certificate of sale relating thereto); and
>
> (b) ...."

In the present case the prohibitory order obtained by the respondent from the court was only made on 22nd April 1969 a period of more than 5 months after the applicant's *caveat* had been registered and therefore it would be of no effect against the applicant's *caveat*. This is amply borne out by the case of *Sockalingam Mudaliar* v. *Ramasamy Chettiar & Anor.*[1].

The application is therefore allowed and there will be an order that the prohibitory order be set aside with costs to the applicant and liberty to apply with consequential directions.

Application allowed.

Solicitors: *Lim Cheng Ean & Co.; Arulanandom & Co.*